

**PARTS 306-399 [RESERVED]****PART 400—TEMPORARY REGULATIONS UNDER THE FEDERAL TAX LIEN ACT OF 1966**

Sec.

400.1-1 Refiling of notice of tax lien.

400.2-1 Discharge of property by substitution of proceeds of sale; subordination of lien.

400.4-1 Notice required with respect to a nonjudicial sale.

400.5-1 Redemption by United States.

AUTHORITY: Sec. 7805, Internal Revenue Code of 1954; 68A Stat. 917; 26 U.S.C. 7805, unless otherwise noted.

**§ 400.1-1 Refiling of notice of tax lien.**

(a) *Scope.* This section provides rules with respect to the provisions contained in section 6323(g), relating to the refiling of a notice of lien arising under section 6321. In general, section 6323(g) contains new rules requiring the Internal Revenue Service to refile a notice of lien during the 1-year period ending 30 days after the expiration of the normal 6-year statutory period for collection of an assessed tax liability, and each succeeding period of 6 years, in order to maintain the effectiveness of a notice of lien. These provisions in section 6323 were added by section 101(a) of the Federal Tax Lien Act of 1966 (80 Stat. 1125), effective after November 2, 1966.

(b) *Requirement to refile.* In order to continue the effect of a notice of lien, the notice must be refiled in the place described in paragraph (c) of this section during the required refiling period (described in paragraph (d) of this section). In the event that two or more notices of lien are filed with respect to a particular tax assessment, the failure to comply with the provisions of paragraphs (c)(1)(i) and (d) of this section in respect of one of the notices of lien does not affect the effectiveness of the refiling of the other notice or notices of lien. Thus, except for the filing of a notice of lien required by paragraph (c)(1)(ii) of this section relating to a change of residence, the validity of any refiling of a notice of lien is not affected by the refiling or non-refiling of any other notice of lien. The effectiveness of a timely refiled notice of lien

relates back to the date on which the notice of lien was effective before the refiling. If the district director fails to refile a notice of lien in the manner described in paragraphs (c) and (d) of this section, the notice of lien is not effective, after the expiration of the required refiling period, as against any person without regard to when the interest of the person in the property subject to the lien was acquired. However, the failure of the district director to refile a notice of lien during the required refiling period will not affect the effectiveness of the notice with respect to (1) property which is the subject matter of a suit, to which the United States is a party, commenced prior to the expiration of the required refiling period, or (2) property which has been levied upon by the United States prior to the expiration of the required refiling period. Failure to refile a notice of lien does not affect the existence of the lien. If a notice of lien is not refiled, and if the lien is still in existence, the Internal Revenue Service may nevertheless file a new notice of lien either on the form prescribed for the filing of a notice of lien or on the form prescribed for refiling a notice of lien. This new filing must meet the requirements of section 6323(f) and is effective from the date on which such filing is made. Upon written request of any person who has a proper interest, any district director may issue a certificate of release of lien if notice of the lien has not been refiled within the required refiling period and the entire liability for the tax has been satisfied or has become unenforceable as a matter of law. Such request should be sent to the district director for the internal revenue district shown on the notice of lien. For provisions relating to certificates of release of lien, see section 6325.

(c) *Place for refiling notice of lien—* (1) *In general.* A notice of lien refiled during the required refiling period (described in paragraph (d) of this section) shall be effective only—

(i) If the notice of lien is refiled in the office in which the prior notice of lien (including a refiled notice) was filed under the provisions of section 6323; and

(ii) In any case in which 90 days or more prior to the date the refiling of

the notice of lien under subdivision (i) of this subparagraph is completed, the Internal Revenue Service receives written information (in the manner described in subparagraph (2) of this paragraph (b)) concerning a change in the taxpayer's residence, if a notice of such lien is also filed in accordance with section 6323f(1)(A)(ii) in the State in which such new residence is located (or, if such new residence is located without the United States, in the District of Columbia). If on or before such 90th day more than one written notice is received concerning a change in the taxpayer's residence, a notice of lien is required by this subdivision to be filed only with respect to the residence shown on the written notice received on the most recent date. This subdivision is applicable regardless of whether the taxpayer resides at the new residence on the date the refiling of notice of lien under subdivision (i) of this subparagraph is completed.

(2) *Notice of change of taxpayer's residence*—(i) *In general.* Except as provided in subdivision (ii) of this subparagraph, for purposes of this section, a notice of change of a taxpayer's residence will be effective only if it is received, in writing, by the Internal Revenue Service from the taxpayer or his representative, relates to an unpaid tax liability of the taxpayer, and states the taxpayer's name and address of his new residence. Although it is not necessary that a written notice contain the taxpayer's identifying number authorized by section 6109, it is preferable that it include such number. For purposes of this subdivision, a notice of change of a taxpayer's residence shown on a return or an amended return (including a return of the same tax) will not be effective to notify the Internal Revenue Service.

(ii) *By return or amended return.* For purposes of this section, in the case of a notice of lien which relates to an assessment of tax made after December 31, 1966, a notice of change of a taxpayer's residence will also be effective if it is contained in a return or amended return of the same type of tax filed with the Internal Revenue Service by the taxpayer which on its face indicates that there is a change in the taxpayer's address and correctly states

the taxpayer's name, address of his new residence, and his identifying number required by section 6109.

(iii) *Other rules applicable.* Other than the means specified in subdivisions (i) and (ii) of this subparagraph, no communication (either written or oral) to the Internal Revenue Service will be considered effective as notice of a change of a taxpayer's residence under this section, whether or not the Service has actual notice of the taxpayer's residence. For the purpose of determining the date on which a notice of change of a taxpayer's residence is received under this section, the notice shall be treated as received on the date it is actually received by the Internal Revenue Service without reference to the provisions of section 7502.

(3) *Examples.* The provisions of this section may be illustrated by the following examples:

*Example 1.* A, a delinquent taxpayer, is a resident of M State and owns real property in N State. Notices of lien are properly filed in M and N States. In order to continue the effect of the notice of lien filed in M State, the Internal Revenue Service must refile, during the required refiling period, the notice of lien with the appropriate office in M State but is not required to refile the notice of lien with the appropriate office in N State. Similarly, in order to continue the effect of the notice of lien filed in N State, the Internal Revenue Service must refile, during the required refiling period, the notice of lien with the appropriate office in N State but is not required to refile the notice of lien with the appropriate office in M State.

*Example 2.* B, a delinquent taxpayer, is a resident of M State. Notice of lien is properly filed in that State. One year before the required refiling period, B establishes his residence in N State, and B immediately notifies the Internal Revenue Service of his change in residence in accordance with the provisions of paragraph (c)(2) of this section. In order to continue the effect of the notice of lien filed in M State, the Internal Revenue Service must refile, during the required refiling period, notices of lien with (i) the appropriate office in M State, and (ii) the appropriate office in N State because B properly notified the Internal Revenue Service of his change in residence to N State more than 89 days prior to the date refiling of the notice of lien in M State is completed. If B did not notify the Internal Revenue Service of his change in residence to N State in accordance with the provisions of paragraph (c)(2) of this section, the Internal Revenue Service would not be required to file a notice of lien

in N State, even if the Internal Revenue Service had actual notice of B's change in residence to N State. In this latter case, in order to continue the effect of the notice of lien filed in M State, the Internal Revenue Service must refile, during the required refiling period, the notice of lien only with the appropriate office in M State.

*Example 3.* C, a delinquent taxpayer, is a resident of O State. Notice of lien is properly filed in that State. Four years before the required refiling period, C establishes his residence in P State, and C immediately notifies the Internal Revenue Service of his change in residence in accordance with the provisions of paragraph (c)(2) of this section. Three years before the required refiling period, C establishes his residence in R State, and again C immediately notifies the Internal Revenue Service of his change in residence in accordance with the provisions of paragraph (c)(2) of this section. In order to continue the effect of the notice of lien filed in O State, the Internal Revenue Service must refile, during the required refiling period, notices of lien with (i) the appropriate office in O State, and (ii) the appropriate office in R State since the notice received by the Service of C's change in residence to R State was the most recent notice received more than 89 days prior to the date refiling in O State is completed. The notice of lien is not required to be filed in P State, even though C properly notified the Internal Revenue Service of his change in residence to P State, because such notice is not the most recent one received.

*Example 4.* Assume the same facts as in example 3, except that C does not notify the Internal Revenue Service of his change in residence to R State in accordance with the provisions of paragraph (c)(2) of this section. In order to continue the effect of the notice of lien filed in O State, the Internal Revenue Service must refile, during the required refiling period, the notice of lien with (i) the appropriate office in O State, and (ii) the appropriate office in P State because C properly notified the Internal Revenue Service of his change in residence to P State, even though C is not a resident of P State on the date refiling of the notice of lien in O State is completed. The Internal Revenue Service is not required to file a notice of lien in R State because C did not properly notify the Service of his change in residence to R State.

*Example 5.* D, a delinquent taxpayer, is a resident of M State and owns real property in N and O States. The Internal Revenue Service properly files notices of lien in M, N, and O States. Five years and 6 months after the date of the assessment shown on the notice of lien, D establishes his residence in P State, and at that time the Internal Revenue Service received from D a notification of his change in residence in accordance with the provisions of paragraph (c)(2) of this section.

On a date which is 5 years and 7 months after the date of the assessment shown on the notice of lien, the Internal Revenue Service properly refiles notices of lien in M, N, and O States which refilings continue the effect of each of the notices of lien. The Internal Revenue Service is not required to file a notice of lien in P State because D did not notify the Internal Revenue Service of his change of residence to P State more than 89 days prior to the date each of the refilings in M, N, and O States was completed.

*Example 6.* Assume the same facts as in example 5 except that the refiling of the notice of lien in O State occurs 100 days after D notifies the Internal Revenue Service of his change in residence to P State in accordance with the provisions of paragraph (c)(2) of this section. In order to continue the effect of the notice of lien filed in O State, in addition to refiling the notice of lien in O State, the Internal Revenue Service must also file, during the required refiling period, a notice of lien in P State because D properly notified the Internal Revenue Service of his change of residence to P State more than 89 days prior to the date the refiling in O State was completed. However, in order to maintain the effect of the refilings in M and N States, the Internal Revenue Service is not required to file, during the required refiling period, the notice of lien in P State since D did not notify the Internal Revenue Service of his change in residence to P State more than 89 days prior to the date the refilings in M and N States were completed.

*Example 7.* E, a delinquent taxpayer, is a resident of T State. Because T State has not designated one office in the case of personal property for filing notices of lien in accordance with the provisions of section 6323(f)(1)(A)(ii), the Internal Revenue Service properly files a notice of lien with the clerk of the appropriate United States district court. However, solely as a matter of convenience for those who may have occasion to search for notices of lien, and not as a matter of legal effectiveness, the Internal Revenue Service also files notice of lien with the recorder of deeds of the county in T State where E resides. In addition, the Internal Revenue Service sent a copy of the notice of lien to the X Life Insurance Company to give the Company actual notice of the notice of lien. In order to continue the effect of the notice of lien, the Internal Revenue Service must refile, during the required refiling period, the notice of lien with the clerk of the appropriate U.S. district court. It is not necessary in order to continue the effect of the notice of the lien to refile the notice of lien with the recorder of deeds of the county where E resides because the refiling of the notice of lien with the recorder of deeds does not constitute a proper filing for the purposes of section 6323(f). In addition, it is not necessary to continue the effect of the notice

of lien under this section to send a copy of the notice of lien to the X Life Insurance Company because the sending of a notice of lien to an insurance company does not constitute a filing for the purposes of section 6323 and, thus, a refiling with an insurance company is not required under this section.

(d) *Required refiling period*—(1) *In general.* For the purpose of this section, except as provided in subparagraph (2) of this paragraph (d), the term “required refiling period” means—

(i) The 1-year period ending 30 days after the expiration of 6 years after the date of the assessment of the tax, and

(ii) The 1-year period ending with the expiration of 6 years after the close of the preceding required refiling period for such notice of lien.

(2) *Tax assessments made before January 1, 1962.* If the assessment of the tax is made before January 1, 1962, the first required refiling period shall be the calendar year 1967. Thus, to maintain the effectiveness of any notice of lien on file which relates to a lien which arose before January 1, 1962, the Internal Revenue Service will refile the notice of lien during the calendar year 1967. The second required refiling period for any such notice of lien is the calendar year 1973.

(3) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

*Example 1.* On March 1, 1963, an assessment of tax is made against B, a delinquent taxpayer, and a lien for the amount of the assessment arises on that date. On July 1, 1963, a notice of lien is properly filed. The notice of lien filed on July 1, 1963, is effective up to and including March 31, 1969. The first required refiling period for the notice of lien begins on April 1, 1968, and ends on March 31, 1969. A refiling of the notice of lien during that period will extend the effectiveness of the notice of lien filed on July 1, 1963, up to and including March 31, 1975. The second required refiling period for the notice of lien begins on April 1, 1974, and ends on March 31, 1975.

*Example 2.* Assume the same facts as in example 1, except that the Internal Revenue Service fails to refile a notice of lien during the first required refiling period (Apr. 1, 1968, through Mar. 31, 1969). However, a notice of lien which meets the requirements of section 6323(f) is filed on June 2, 1971. Because of this filing, the notice of lien filed on June 2, 1971, is effective as of June 2, 1971. That notice must itself be refiled during the 1-year period ending on March 31, 1975, if it is to con-

tinue in effect after March 31, 1975. As in example 1, the second required refiling period for the notice of lien begins on April 1, 1974, and ends on March 31, 1975.

*Example 3.* On April 1, 1960, an assessment of tax is made against B, a delinquent taxpayer, and a tax lien for the amount of the assessment arises on that date. On June 1, 1962, a notice of lien is properly filed. Because the assessment of tax was made before January 1, 1962, the notice of lien filed on June 1, 1962, is effective up to and including December 31, 1967. The first required refiling period for the notice of lien is the calendar year 1967. A refiling of the notice of lien during 1967 will extend the effectiveness of the notice of lien filed on June 1, 1962, up to and including December 31, 1973. The second required refiling period for the notice of lien is the calendar year 1973.

[T.D. 6932, 32 FR 14835, Oct. 18, 1967]

**§ 400.2-1 Discharge of property by substitution of proceeds of sale; subordination of lien.**

(a) *Scope.* This section provides rules under the provisions in section 6325(b)(3) which relate to the discharge of property from a tax lien by substitution therefor of a lien on the proceeds of the sale of the property, and in section 6325(d) which relate to the subordination of a tax lien. Section 6325 was amended by section 103(a) of the Federal Tax Lien Act of 1966 (80 Stat. 1133), effective after November 2, 1966.

(b) *Discharge of property by substitution of proceeds of sale.* Pursuant to section 6325(b)(3), a district director may, in his discretion, issue a certificate of discharge of any part of the property subject to any lien imposed under chapter 64 of the Code if part of the property is sold and, pursuant to a written agreement with the district director, the proceeds of the sale are held, as a fund subject to the lien of the United States, in the same manner and with the same priority as the liens and claims had with respect to the discharged property. In order for the provisions of this paragraph to apply, the sale must divest the taxpayer of all right, title, and interest in the property sought to be discharged. Any person desiring a certificate of discharge under this paragraph shall submit an application in writing to the district director responsible for the collection of the tax. The application shall contain such information as the district

director may require. Any reasonable and necessary expenses incurred in connection with the sale of the property and the administration of the sale proceeds shall be paid by the applicant or from the proceeds of the sale before satisfaction of any claims and liens.

(c) *Subordination of lien*—(1) *By payment of the amount of subordination.* Pursuant to section 6325(d)(1), a district director may, in his discretion, issue a certificate of subordination of any lien imposed under chapter 64 of the Code upon any part of the property subject to the lien if there is paid over to the district director an amount equal to the amount of the lien or interest to which the certificate subordinates the lien of the United States. Under this provision, the tax lien may be subordinated to another lien or interest on a dollar-for-dollar basis. For example, if a notice of a Federal tax lien is filed and a delinquent taxpayer secures a mortgage on a part of the property subject to the tax lien and pays over the amount of the principal of the debt secured by the mortgage to a district director after an application for a certificate of subordination is approved, the district director will issue a certificate of subordination. This certificate will have the effect of subordinating the tax lien to the mortgage.

(2) *To facilitate tax collection*—(i) *In general.* Pursuant to section 6325(d)(2), a district director may, in his discretion, issue a certificate of subordination of any lien imposed under chapter 64 of the Code upon any part of the property subject to the lien if the district director believes that the subordination of the lien will ultimately result in an increase in the amount realizable by the United States from the property subject to the lien and will facilitate the ultimate collection of the tax liability.

(ii) *Example.* The provisions of this subparagraph may be illustrated by the following example:

*Example.* A, a farmer, needs money in order to harvest his crop. However, a Federal tax lien, notice of which has been filed, is outstanding with respect to A's property. B, a lending institution is willing to make the necessary loan if the loan is secured by a first mortgage on the farm which is prior to the Federal tax lien. Upon examination, the district director believes that ultimately the

amount realizable from A's property will be increased and the collection of the tax liability will be facilitated by the availability of cash when the crop is harvested and sold. In this case, the district director may, in his discretion, subordinate the tax lien on the farm to the mortgage securing the crop harvesting loan.

(3) *Application for certificate of subordination.* Any person desiring a certificate of subordination under this paragraph shall submit an application in writing to the district director responsible for the collection of the tax. The application shall contain such information as the district director may require.

[T.D. 6944, 33 FR 732, Jan. 20, 1968]

**§ 400.4-1 Notice required with respect to a nonjudicial sale.**

(a) *Scope and application of this section*—(1) *In general.* Section 109 of the Federal Tax Lien Act of 1966 (80 Stat. 1141) amended the Internal Revenue Code of 1954 by adding a new section 7425, relating to the discharge of liens. A tax lien of the United States, or a title derived from the enforcement of a tax lien of the United States, may be discharged or divested under local law only in the manner prescribed in section 2410 of title 28 of the United States Code or section 7425 of the Internal Revenue Code. Section 7425(a) contains provisions relating to the discharge of a lien or a title derived from the enforcement of a lien in the judicial proceedings described in subsection (a) of section 2410 of title 28 of the United States Code. These judicial proceedings are plenary in nature and proceed on formal pleadings. Section 7425(b) contains provisions relating to the discharge of a lien or a title derived from the enforcement of a lien in the event of a nonjudicial sale with respect to the property involved. Section 7425(c) contains special rules relating to the notice of sale requirements contained in section 7425(b). Paragraph (b) of this section of the regulations contains rules with respect to the nonjudicial sales described in section 7425(b). Paragraph (c) of this section of the regulations contains rules with respect to the notice of sale provisions of section 7425(c)(1). Paragraph (d) of this section

of the regulations contains rules relating to the consent to sale provisions of section 7425(c)(2). Paragraph (e) of this section of the regulations contains rules relating to the sale of perishable goods provisions of section 7425(c)(3). Paragraph (f) of this section of the regulations contains the requirements with respect to the contents of a notice of sale.

(2) *Effective date of this section.* The provisions of section 7425, as added by the Federal Tax Lien Act of 1966, are effective with respect to sales occurring after November 2, 1966. The notice of sale provisions of section 7425(c) (1) or (3) do not apply to sales occurring after November 2, 1966, if the seller of the property performed an act before November 3, 1966, which act at the time of performance was required and effective under local law with respect to the sale. An example of such an act is publication of a notice of the sale in a local newspaper before November 3, 1966, if local law requires such publication before a sale and the publication is effective under local law. Accordingly, in such a case, it is not necessary to notify the Internal Revenue Service pursuant to the provisions of section 7425(c) (1) or (3). With respect to a notice of sale required under section 7425(c) (1) or (3)—

(i) Any notice of sale given to an office of the Internal Revenue Service or the Treasury Department during the period November 3, 1966, through December 21, 1966, shall be considered as adequate;

(ii) Any notice of sale given during the period December 22, 1966, through January 31, 1968, which complies with provisions of either

(a) Revenue Procedure 67-25, 1967-20 I.R.B. 42 (based on Technical Information Release 873, dated December 22, 1966), or

(b) This section

shall be considered as adequate; and

(iii) Any notice of sale given after January 31, 1968, which complies with the provisions of this section shall be considered as adequate.

(b) *Nonjudicial sale*—(1) *In general.* Section 7425(b) contains provisions with respect to the effect on the interest of the United States in property in which the United States has or claims

a lien, or a title derived from the enforcement of a lien, when a sale is made pursuant to—

(i) An instrument creating a lien on the property sold,

(ii) A confession of judgment on the obligation secured by an instrument creating a lien on the property sold, or

(iii) A statutory lien on the property sold.

For purposes of this section, such a sale is referred to as a “nonjudicial sale.” The term “nonjudicial sale” includes, but is not limited to, the divestment of the taxpayer’s title to property which occurs by operation of law, as well as those which result from a public or private sale. Under section 7425(b)(1), if a notice of lien is filed in accordance with section 6323(f) or (g), or the title derived from the enforcement of a lien is recorded as provided by local law, more than 30 days before the date of sale, and the appropriate district director is not given notice of the sale (in the manner prescribed in paragraph (c) of this section), the sale shall be made subject to and without disturbing the lien or title of the United States. Under section 7425(b)(2)(C), in any case in which notice of the sale is given to the district director not less than 25 days prior to the date of sale (in the manner prescribed in section 7425(c)(1)), the sale shall have the same effect with respect to the discharge or divestment of the lien or title as may be provided by local law with respect to other junior liens. A nonjudicial sale pursuant to a lien which is junior to a tax lien does not divest the tax lien, even though notice of the nonjudicial sale is given to the appropriate district director. However, under the provisions of section 6325(b), § 301.6325-1 of this chapter (Regulations on Procedure and Administration), and § 400.2-1, a district director may discharge the property from a tax lien, including a tax lien which is senior to another lien upon the property. In the case of a nonjudicial sale subject to the provisions of section 7425(b), in order to compute any period of time determined with reference to the date of sale, the date of sale shall be determined in accordance with the following rules:

(iv) In the case of divestment of junior liens on property resulting directly from a public sale, the date of sale is deemed to be the date the public sale is held, regardless of the date under local law on which junior liens on the property are divested or the title to the property is transferred,

(v) In the case of divestment of junior liens on property resulting directly from a private sale, the date of sale is deemed to be the date title to the property is transferred, regardless of the date junior liens on the property are divested under local law, and

(vi) In the case of divestment of junior liens on property not resulting directly from a public or private sale, the date of sale is deemed to be the date on which junior liens on the property are divested under local law.

For provisions relating to the right of redemption of the United States, see section 7425(d) and § 400.5-1.

(2) *Examples.* The provisions of subparagraph (1) of this paragraph (b), may be illustrated by the following examples:

*Example 1.* Under the law of M State upon entry of judgment, the judgment creditor obtains a statutory lien upon the real property of the judgment debtor, and certain procedures are provided by which the judgment creditor may execute by public sale upon such real property. These procedures provide, among other things, for notification by personal service or registered or certified mail to other lien creditors, if any, and publication of a notice of the sale in a local newspaper. After the expiration of a prescribed period of time after such notification and publication, the sheriff of the county where the real property is located may sell the property at public sale. After payment of the amount bid at the public sale, the sheriff issues to the purchaser a deed to the real property, and the interests of junior lienors in the property are divested. For purposes of this section, such an execution sale is a nonjudicial sale described in section 7425(b) since the sale is made pursuant to a statutory lien on the property sold. The date of sale, for purposes of computing a period of time determined with reference to the date of sale, is the date on which the public sale is held, since junior liens on the real property are divested directly as a result of the public sale. This result obtains even though the junior liens are legally divested on a later date when the sheriff issues the deed.

*Example 2.* Under the law of N State, mortgages on real property may contain a power

of sale which authorizes the mortgagee, upon breach by the mortgagor of one of the conditions of the mortgage, to have the mortgaged property sold at public sale. This public sale must be preceded by notice by advertisement in a local newspaper, and the time, place, description of the property, and other terms of the sale must be specified. The purchaser at such a public sale obtains a title to the real property which is not subject to a right of redemption by the mortgagor and which divests the interests of the junior lienors in the property. For purposes of this section, a sale pursuant to such a power of sale is a nonjudicial sale described in section 7425(b) since the sale is made pursuant to the mortgage instrument which created a lien on the property sold. The date of the sale, for purposes of computing a period of time determined with reference to the date of sale, is the date of the public sale since junior liens on the property are divested directly as a result of the public sale.

*Example 3.* Under the law of O State, upon breach by a mortgagor of real property of one of the conditions of the mortgage, the mortgagee may foreclose the mortgage by securing possession of the property by one of several procedures provided by statute. These procedures are generally referred to as "strict foreclosure." In order for a foreclosure to be effective under these procedures, a certificate attesting the fact of entry must be recorded with the proper registrar of deeds within 30 days after the mortgagee enters the property. During the 1-year period following the date on which the certificate of entry is recorded, the mortgagor or a junior lienor may redeem the property by paying the mortgagee the amount of the mortgage obligation. If, during such 1-year period the property is not redeemed and the mortgagee's possession is continued, the interests of the mortgagor and the junior lienors in the property are divested. For purposes of this section, such a foreclosure procedure is a nonjudicial sale described in section 7425(b) since it results in the divestment of the mortgagor's interest in the property by operation of law pursuant to the mortgage which created a lien on the property. In addition, since there is no public or private sale which directly results in the divestment of junior liens on the property, the date of sale, for purposes of computing a period of time determined with reference to the date of sale, is the date on which the 1-year period following the recording of the certificate of entry expires.

*Example 4.* The law of P State contains a procedure which permits a county to collect a delinquent tax assessment with respect to real property by the means of a tax sale of the property. First, a notice of a public auction with respect to the tax assessment on the real property is published in a local

newspaper. At the public auction, the purchaser, upon payment of the delinquent taxes and interest, obtains from the county tax collector a tax certificate with respect to the real property. Since the obtaining of this tax certificate does not directly result in the divestment of either the owner's title or junior liens with respect to the property, the public auction is not a nonjudicial sale described in section 7425(b). At any time before a tax deed with respect to the property is issued by the clerk of the county court, the owner or any holder of a lien or other interest with respect to the property may obtain the tax certificate by paying the holder of the tax certificate the amount of the taxes, interest, and costs. After a date which is two years after the date on which the tax assessment became delinquent, the holder of the tax certificate may request the clerk of the county court to have the property advertised for sale. After advertisement of the sale, the clerk of the county court conducts a public sale of the real property and the purchaser obtains a tax deed. The interests of all junior lienors in the property are divested and the property is not subject to a right of redemption under the law of P State. For purposes of this section, this public sale is considered to be a nonjudicial sale described in section 7425(b) since the sale is made pursuant to a statutory lien on the property sold. The date of the sale, for purposes of computing a period of time determined with reference to the date of sale, is the date on which the public sale is held at which the purchaser obtains a tax deed as this sale directly results in the divestment of junior liens on the property.

(c) *Notice of sale requirements*—(1) *In general.* Except in the case of the sale of perishable goods described in paragraph (e) of this section, a notice (as described in paragraph (f) of this section) of a nonjudicial sale shall be given, in writing by registered or certified mail or by personal service, not less than 25 days prior to the date of sale (determined under the provisions of paragraph (b)(1) (iv), (v), and (vi) of this section), to the district director (marked for the attention of the chief, special procedures section) for the internal revenue district in which the sale is to be conducted. Thus, under this section, a notice of sale is not effective if it is given to a district director other than the district director for the internal revenue district in which the sale is to be conducted. The provisions of sections 7502 (relating to timely mailing treated as timely filing) and 7503 (relating to time for performance

of acts where last day falls on Saturday, Sunday, or legal holiday) apply in the case of notices required to be made under this section.

(2) *Postponement of scheduled sale*—(i) *Where notice of sale is given.* In the event that notice of a sale is given in accordance with subparagraph (1) of this paragraph (c), with respect to a scheduled sale which is postponed to a later time or date, the seller of the property is required to give notice of the postponement to the district director in the same manner as is required under local law with respect to other secured creditors. For example, assume that in M State local law requires that in the event of a postponement of a scheduled foreclosure sale of real property, an oral announcement of the postponement at the place and time of the scheduled sale constitutes sufficient notice to secured creditors of the postponement. Accordingly, if at the place and time of a scheduled sale in M State an oral announcement of the postponement is made, the Internal Revenue Service is considered to have notice of the postponement for the purpose of this subparagraph.

(ii) *Where notice of sale is not given.* In the event that—

(a) Notice of a nonjudicial sale would not be required under subparagraph (1) of this paragraph (c), if the sale were held on the originally scheduled date,

(b) Because of a postponement of the scheduled sale, more than 30 days elapse between the originally scheduled date of the sale and the date of the sale, and

(c) A notice of lien with respect to the property to be sold is filed more than 30 days before the date of the sale, notice of the sale is required to be given to the district director in accordance with the provisions of subparagraph (1) of this paragraph (c). In any case in which notice of sale is required to be given with respect to a scheduled sale, and notice of the sale is not given, any postponement of the scheduled sale does not affect the rights of the United States under section 7425(b).

(iii) *Examples.* The provisions of subdivision (ii) of this subparagraph may be illustrated by the following examples:



*Example 1.* A nonjudicial sale of Blackacre, belonging to A, a delinquent taxpayer, is scheduled for December 2, 1968. As no notice of lien is filed applicable to Blackacre more than 30 days before December 2, 1968, no notice of sale is given to the district director. On December 2, 1968, the sale of Blackacre is postponed until January 15, 1969. A notice of lien with respect to Blackacre is properly filed on January 2, 1969. The sale of Blackacre is held on January 15, 1969. Even though more than 30 days elapsed between the originally scheduled date of the sale (Dec. 2, 1968) and the date of the sale (Jan. 15, 1969), no notice of sale is required to be given to the district director since the notice of lien was not filed more than 30 days before the date of the sale.

*Example 2.* Assume the same facts as in example 1 except that the notice of lien is properly filed on November 29, 1968. Since more than 30 days elapsed between the originally scheduled date of the sale and the date of the sale, and the notice of lien is filed (on Nov. 29, 1968) more than 30 days before the date of the sale (Jan. 15, 1969), notice of the sale, in accordance with the provisions of subparagraph (1) of this paragraph, is required to be given to the district director.

*Example 3.* A nonjudicial sale of Whiteacre, belonging to B, a delinquent taxpayer, is scheduled for December 2, 1968. A notice of lien applicable to Whiteacre is filed on November 12, 1968. As the notice of lien was not filed more than 30 days before December 2, 1968, no notice of sale is given to the district director. On December 2, 1968, the sale of Whiteacre is postponed until December 20, 1968. The sale of Whiteacre is held on December 20, 1968. Even though more than 30 days elapsed between the date notice of lien was filed (Nov. 12, 1968) and the date of the sale (Dec. 20, 1968), no notice of sale is required to be given to the district director since not more than 30 days elapsed between the date of the originally scheduled sale (Dec. 2, 1968) and the date the sale was actually held (Dec. 20, 1968).

(d) *Consent to sale—(1) In general.* Notwithstanding the notice of sale provisions of paragraph (c) of this section, a nonjudicial sale of property shall discharge or divest the property of the lien or title of the United States if the district director for the internal revenue district in which the sale occurs consents to the sale of the property free of the lien or title. Pursuant to section 7425(c)(2), where adequate protection is afforded the lien or title of the United States, a district director may, in his discretion, consent with respect to the sale of property in appropriate cases. Such consent shall be ef-

fective only if given in writing and shall be subject to such limitations and conditions as the district director may require. However, a district director may not consent to a sale of property under this section after the date of sale, as determined under paragraph (b)(1) (iv), (v), and (vi) of this section. For provisions relating to the authority of the district director to discharge property subject to a tax lien in the case where the proceeds of the sale are held as a fund subject to the liens and claims of the United States, see section 6325(b)(3) and § 400.2-1.

(2) *Application for consent.* Any person desiring a district director's consent to sell property free of a tax lien or a title derived from the enforcement of a tax lien of the United States in the property shall submit to the district director for the internal revenue district in which the sale is to occur a written application in triplicate, declaring it is made under penalties of perjury, requesting that such consent be given. The application shall contain the information required in the case of a notice of sale, as set forth in paragraph (f)(1) of this section, and, in addition, shall contain a statement of the reasons why the consent is desired.

(e) *Sale of perishable goods—(1) In general.* A notice (as described in paragraph (f) of this section) of a nonjudicial sale of perishable goods (as defined in subparagraph (2) of this paragraph (e)) shall be given in writing, by registered or certified mail or delivered by personal service, at any time before the sale to the district director (marked for the attention of the chief, special procedures section) for the internal revenue district in which the sale is to be conducted. If a notice of a nonjudicial sale is timely given in the manner described in this paragraph, the nonjudicial sale shall discharge or divest the tax lien, or a title derived from the enforcement of a tax lien, of the United States in the property. The provisions of sections 7502 (relating to timely mailing treated as timely filing) and 7503 (relating to time for performance of acts where last day falls on Saturday, Sunday, or legal holiday) apply in the case of notices required to be made under this paragraph. For example, where the sale of perishable

goods is scheduled for 1 p.m. on November 1, 1968, and the notice is mailed by certified mail to the district director at 10 a.m. on November 1, 1968, the notice shall be considered as timely given for purposes of this paragraph. The seller of the perishable goods shall hold the proceeds (exclusive of costs) of the sale as a fund, for not less than 30 days after the date of the sale, subject to the liens and claims of the United States, in the same manner and with the same priority as the liens and claims of the United States had with respect to the property sold. If the seller fails to hold the proceeds of the sale in accordance with the provisions of this paragraph, the seller shall be personally liable to the United States for an amount equal to the value of the interest of the United States in the fund. However, even if the proceeds of the sale are not so held by the seller, but all the other provisions of this paragraph are satisfied, the buyer of the property at the sale takes the property free of the liens and claims of the United States. In the event of a postponement of the scheduled sale of perishable goods, the seller is not required to notify the district director of the postponement. For provisions relating to the authority of the district director to discharge property subject to a tax lien in the case where the proceeds of the sale are held as a fund subject to the liens and claims of the United States, see section 6325(b)(3) and § 400.2-1.

(2) *Definition of perishable goods.* For the purpose of this paragraph, the term "perishable goods" means any personal property which, in the reasonable view of the person selling the property, is liable to perish or become greatly reduced in price or value by keeping, or cannot be kept without great expense.

(f) *Content of notice of sale—(1) In general.* With respect to a notice of sale described in paragraph (c) or (e) of this section, the notice will be considered adequate if it contains the information described in subdivisions (i), (ii), (iii), and (iv) of this subparagraph.

(i) The name and address of the person submitting the notice of sale.

(ii) A copy of each Notice of Federal Tax Lien (Form 668) affecting the property to be sold, or the following infor-

mation as shown on each such Notice of Federal Tax Lien:

(a) The internal revenue district named thereon,

(b) The name and address of the taxpayer, and

(c) The date and place of filing of the notice.

(iii) With respect to the property to be sold, the following information:

(a) A detailed description, including location, of the property affected by the notice (in the case of real property, the street address, city, and State and the legal description contained in the title or deed to the property and, if available, a copy of the abstract of title);

(b) The date, time, place, and terms of the proposed sale of the property; and

(c) In the case of a sale of perishable property described in paragraph (e) of this section, a statement of the reasons why the property is believed to be perishable.

(iv) The approximate amount of the principal obligation, including interest, secured by the lien sought to be enforced and a description of the other expenses (such as legal expenses, selling costs, etc.) which may be charged against the sale proceeds.

(2) *Inadequate notice.* Except as otherwise provided in this subparagraph, a notice of sale described in paragraph (c) of this section which does not contain the information described in subparagraph (1) of this paragraph (f), will not be considered adequate by a district director. If a district director determines that the notice is inadequate, he will give written notification of the items of information which are inadequate to the person who submitted the notice. In such event a notice complying with the provisions of this section (including the requirement that the notice be given 25 days prior to the sale in the case of a notice described in paragraph (c) of this section) must be given. However, in accordance with the provisions of paragraph (d)(1) of this section, in such a case the district director may, in his discretion, consent to the sale of the property free of the lien or title of the United States even though notice of the sale is not given 25 days prior to the sale. In any case in

which the person who submitted a timely notice does not receive, more than 5 days prior to the date of the sale, written notification from the district director that the notice is inadequate, the notice shall be considered adequate for the purposes of this section.

(3) *Acknowledgment of notice.* If a notice of sale described in paragraph (c) or (e) of this section is submitted in duplicate to the district director with a written request that receipt of the notice be acknowledged and returned to the person giving the notice, this request will be honored by the district director. The acknowledgment by the district director will indicate the date and time of the receipt of the notice.

(4) *Disclosure of adequacy of notice.* The district director for the internal revenue district in which the sale was held is authorized to disclose, to any person who has a proper interest, whether an adequate notice of sale was given under subparagraph (1) of this paragraph (f). Any person desiring this information should submit to the district director a written request which clearly describes the property sold, identifies the applicable notice of lien, gives the reasons for requesting the information, and states the name and address of the person making the request.

[T.D. 6944, 33 FR 734, Jan. 20, 1968; 33 FR 916, Jan. 25, 1968]

**§ 400.5-1 Redemption by United States.**

(a) *Scope.* The purpose of this section is to prescribe rules with respect to the provisions contained in section 7425(d), relating to redemption of real property by the United States. Section 109 of the Federal Tax Lien Act of 1966 (80 Stat. 1141) amended the Internal Revenue Code of 1954 by adding a new section 7425, relating to the discharge of tax liens, effective after November 2, 1966.

(b) *Right to redeem—(1) In general.* In the case of a nonjudicial sale of real property to satisfy a lien prior to the tax lien, the district director may redeem the property within the redemption period (as described in subparagraph (2) of this paragraph (b)). The right of redemption of the United States exists under section 7425(d) even though the district director has consented to the sale under section

7425(c)(2) and paragraph (d) of § 400.4-1. For purposes of this section, the term “nonjudicial sale” shall have the same meaning as when used in paragraph (b)(1) of § 400.4-1.

(2) *Redemption period.* For purposes of this section, the redemption period shall be—

(i) The period beginning with the date of the sale (as determined under paragraph (b)(1)(iv), (v), and (vi) of § 400.4-1) and ending with the 120th day after such date, or

(ii) The period for redemption of real property allowable, with respect to other secured creditors, under local law of the place where the real property is located,

whichever is longer.

(3) *Limitations.* In the event a sale does not ultimately discharge the property from the tax lien (whether by reason of local law or the provisions of section 7425(b)), the provisions of this section do not apply since the tax lien will continue to attach to the property after the sale. In a case in which the Internal Revenue Service is not entitled to a notice of sale under section 7425(b) and § 400.4-1, the United States does not have a right of redemption under section 7425(d). However, in such a case, if a tax lien has attached to the property at the time of sale, the United States has the same right of redemption, if any, which is afforded to any secured creditor under the local law of the place in which the property is situated.

(c) *Amount to be paid—(1) In general.* In any case in which a district director exercises the right to redeem real property, the amount to be paid is the sum of the following amounts—

(i) The actual amount paid for the property being redeemed (which, in the case of a purchaser who is the holder of the lien being foreclosed, shall include the amount of the obligation secured by such lien to the extent legally satisfied by reason of the sale);

(ii) Interest on the amount paid (described in subdivision (i) of this subparagraph) at the sale by the purchaser of the real property computed at the rate of 6 percent per annum for the period from the date of the sale (as determined under paragraphs (b)(1)(iv), (v),

and (vi) of § 400.4-1) to the date of redemption; and

(iii) The amount, if any, equal to the excess of (a) the expenses necessarily incurred in connection with such property by the purchaser, over (b) the income from such property realized by the purchaser plus a reasonable rental value of such property (to the extent the property is used by or with the consent of the purchaser, or is rented at less than its reasonable rental value).

(2) *Examples.* The provisions of subparagraph (1)(i) of this paragraph (b), may be illustrated by the following examples:

*Example 1.* A, a delinquent taxpayer, owns Blackacre located in X State upon which B holds a mortgage. After the mortgage is properly recorded, a notice of tax lien is filed which is applicable to Blackacre. Subsequently, A defaults on the mortgage and B forecloses on the mortgage which has an outstanding obligation in the amount of \$100,000. At the foreclosure sale, B bids \$50,000 and obtains title to Blackacre as a result of the sale. At the time of the foreclosure sale, Blackacre has a fair market value of \$75,000. Under the laws of X State, the mortgage obligation is fully satisfied as a result of the foreclosure sale and the mortgagee cannot obtain a deficiency judgment. Under subparagraph (1)(i) of this paragraph, the district director must pay \$100,000 in order to redeem Blackacre.

*Example 2.* Assume the same facts as in example 1, except that under the laws of X State, the fair market value of the property foreclosed is the amount of the obligation legally satisfied as a result of the foreclosure sale, and in a case in which the amount of the obligation exceeds the amount of the fair market value of the property, the mortgagee has the right to a judgment for the deficiency computed as the difference between the obligation and the fair market value of the property. In such a case the district director must, under subparagraph (1)(i) of this paragraph, pay \$75,000 in order to redeem Blackacre, whether or not B seeks a judgment for the deficiency.

*Example 3.* Assume the same facts as in example 1, except that under the laws of X State, the amount bid is the amount of the obligation legally satisfied as a result of the foreclosure sale, and in the case in which the amount of the obligation exceeds the amount bid, the mortgagee has the right to a judgment for the deficiency computed as the difference between the amount of the obligation and the amount bid. In such a case, the district director must under subparagraph (1)(i) of this paragraph, pay \$50,000 in order

to redeem Blackacre, whether or not B seeks a judgment for the deficiency.

(d) *Certificate of redemption*—(1) *In general.* If a district director exercises the right of redemption of the United States described in paragraph (b) of this section, he shall apply to the officer designated by local law, if any, for the documents necessary to evidence the fact of redemption and to record title to the redeemed property in the name of the United States. If no such officer has been designated by local law or if the officer designated by local law fails to issue the necessary documents, the district director is authorized to issue a certificate of redemption for the property redeemed by the United States.

(2) *Filing.* The district director shall, without delay, cause either the documents issued by the local officer or the certificate of redemption executed by the district director, described in subparagraph (1) of this paragraph (d), to be duly recorded in the proper registry of deeds. If a certificate of redemption is issued by the district director and if the State in which the real property redeemed by the United States is situated has not by law designated an office in which the certificate of redemption may be recorded, the district director shall file the certificate of redemption in the office of the clerk of the U.S. district court for the judicial district in which the redeemed property is situated.

(3) *Effect of certificate of redemption.* A certificate of redemption executed pursuant to subparagraph (1) of this paragraph (d), shall constitute prima facie evidence of the regularity of the redemption. When a certificate of redemption is recorded, it shall transfer to the United States all the rights, title, and interest in and to the redeemed property acquired by the person from whom the district director redeemed the property by virtue of the sale of the property.

(4) *Application for release of right of redemption.* Upon application of a party with a proper interest in the real property sold in a nonjudicial sale described in section 7425(b) and paragraph (b) of § 400.4-1, which real property is subject to the right of redemption of

the United States described in this section, the district director may, in his discretion, release the right of redemption with respect to the property. The application for the release shall be submitted in writing to a district director and shall contain such information as the district director may require. If the district director determines that the right of redemption of the United States is without value, no amount shall be required to be paid with respect to the release of the right of redemption.

[T.D. 6944, 33 FR 737, Jan. 20, 1968]

**PART 401—TEMPORARY PROCEDURES AND ADMINISTRATION REGULATIONS UNDER THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982 (PUB. L. 97-248)**

**§ 401.6325-1 Release of liens.**

(a) *In general.* The district director shall issue a certificate of release for a filed notice of Federal tax lien not later than 30 days after the date on which the district director finds that the entire tax liability listed in such notice of Federal tax lien has been fully satisfied (as defined in paragraph (c) of this section) or has become legally unenforceable.

(b) *Certificate of release for a lien which has become legally unenforceable.* The district director shall have the authority to file a notice of Federal tax lien which also contains a certificate of release pertaining to those liens which become legally unenforceable. Such release will become effective as a release as of a date prescribed in the document containing the notice of Federal tax lien and certificate of release.

(c) *Satisfaction of tax liability.* For purposes of paragraph (a) of this section, satisfaction of the tax liability occurs when—

(1) The district director determines that the entire tax liability listed in a notice of Federal tax lien has been fully satisfied. Such determination will be made as soon as practicable after tender of payment; or

(2) The taxpayer provides the district director with proof of full payment (as defined in paragraph (d) of this section)

with respect to the entire tax liability listed in a notice of Federal tax lien together with the information and documents set forth in paragraph (f) of this section. See paragraph (e) of this section if more than one tax liability is listed in a notice of Federal tax lien.

(d) *Proof of full payment.* As used in paragraph (c)(2) of this section, the term “proof of full payment” means—

(1) An internal revenue cashier’s receipt reflecting full payment of the tax liability in question;

(2) A canceled check in an amount sufficient to satisfy the tax liability for which the release is being sought; or

(3) Any other manner of proof acceptable to the district director.

(e) *Notice of a Federal tax lien which lists multiple liabilities.* When a notice of Federal tax liens lists multiple tax liabilities, the district director shall issue a certificate of release when all of the tax liabilities listed in the notice of Federal tax lien have been fully satisfied or have become legally unenforceable. In addition, if the taxpayer requests that a certificate of release be issued with respect to one or more tax liabilities listed in the notice of Federal tax lien and such liability has been fully satisfied or has become legally unenforceable, the district director shall issue a certificate of release. For example, if a notice of Federal tax lien lists two separate liabilities and one of the liabilities is satisfied, the taxpayer may request the issuance of a certificate of release with respect to the satisfied tax liability and the district director shall issue a release. See paragraph (c) of this section in determining when a tax lien has been fully satisfied. A request made by the taxpayer shall be made to the district director in accordance with the procedures in paragraph (f) of this section.

(f) *Taxpayer requests.* A request for a certificate of release with respect to a notice of Federal tax lien shall be submitted in writing to the district director (marked for the attention of the Chief, Special Procedures Function) of the district in which the notice of Federal tax lien was filed. The request shall contain the following—

(1) Name and address of the taxpayer;